

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DENNIS KOESTERER, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WASHINGTON MUTUAL, INC.,
KERRY K. KILLINGER, DAVID C.
SCHNEIDER and THOMAS W. CASEY,

Defendants.

Civil Action No. 1:07-CV-9801-CM

ECF FILED

(Captions continued on subsequent page)

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE MOTION
OF ONTARIO TEACHERS' PENSION PLAN BOARD FOR APPOINTMENT AS
LEAD PLAINTIFF AND IN OPPOSITION TO ALL OTHER MOTIONS**

JOEL ABRAMS and BRIAN ROFFE,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

WASHINGTON MUTUAL, INC.,
KERRY K. KILLINGER , STEPHEN J.
ROTELLA and THOMAS W. CASEY,

Defendants.

Civil Action No. 1:07-CV-9806-AKH

ROBERT L. GARBER, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

WASHINGTON MUTUAL, INC.,
KERRY K. KILLINGER , STEPHEN J.
ROTELLA and THOMAS W. CASEY,

Defendants.

Civil Action No. 1:07-CV-11422-UA

Ontario Teachers' Pension Plan Board ("Ontario Teachers") respectfully requests that the Court appoint it as Lead Plaintiff pursuant to the Private Securities Litigation Reform Act. 15 U.S.C. § 78u-4(a)(3)(B). Ontario Teachers suffered approximate losses of \$24 million in connection with this action—the largest financial interest of any of the movants—and otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. *See* 15 U.S.C. § 78u-4(a)(3)(B); *see also Glauser v. EVCI Career Colleges Holding Corp.*, 236 F.R.D. 184, 187 (S.D.N.Y. 2006).

On January 4, 2008, five motions were filed on behalf of investors or groups of investors seeking appointment as Lead Plaintiff. Three of the five motions have since been withdrawn.¹ Other than Ontario Teachers' motion, the only remaining motion is on behalf of the Massachusetts Pension Reserves Investment Management Board ("Mass PRIM"). Mass PRIM, however, did not file an opposition to Ontario Teachers' motion for appointment as Lead Plaintiff. Ontario Teachers' motion is, thus, unopposed.

187 (S.D.N.Y. 2006).

Accordingly, Ontario Teachers respectfully requests that the Court appoint it as Lead Plaintiff, approve its selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for the Class, and consolidate all related actions.

Dated: January 25, 2008

Respectfully submitted,

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

/s/ Gerald H. Silk

Gerald H. Silk (GS-4565)

Noam Mandel (NM-0203)

¹ As set forth in Ontario Teachers' Memorandum of Law in Further Support, the movants that have filed withdrawals are the NYC Police and Fire Pension Funds; the WaMu Institutional Investor Group; and Mr. Burton Rosenfield.

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*Counsel for Ontario Teachers' Pension Plan
Board and Proposed Lead Counsel for the
Class*